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GOOGLE LLC

20 ANIBAL RODRIGUEZ, et al. individually and
on behalf of all others similarly situated,

Case No. 3:20-CV-04688-RS

**GOOGLE LLC'S OBJECTIONS TO
PLAINTIFFS' OPENING DEMONSTRATIVES
REGARDING DAMAGES; GOOGLE'S
RELATED MOTION IN LIMINE NO. 15 TO
EXCLUDE EVIDENCE OF UNTIMELY
ALTERNATIVE UNJUST ENRICHMENT
CALCULATIONS**

Dept: 3, 17th Fl.
Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2020
Trial Date: August 18, 2025

1 Defendant Google LLC (“Google”) hereby submits these objections to Plaintiffs’ proposed
 2 opening demonstratives regarding calculations for actual damages and unjust
 3 enrichment. Plaintiffs’ demonstratives for actual damages illustrate the danger of Plaintiffs’
 4 reliance on new and unsupported damages models that Google raised in its Motion *in Limine* (No.
 5 13) Regarding Improper Demonstratives and Argument Re Actual Damages, filed on August 8,
 6 2025. *See* Dkt. No. 589.

7 Further, Plaintiffs now appear to plan to present inflated figures to the jury for their unjust
 8 enrichment calculation based on untimely “alternative calculations” proffered by Plaintiffs’
 9 damages expert, Michael Lasinski. Google respectfully requests that the Court exclude the new
 10 figures for both actual damages and unjust enrichment, and instruct Plaintiffs that they may not
 11 present to the jury any demonstratives, statements, or evidence regarding these figures.

12 **I. BACKGROUND**

13 **A. Mr. Lasinski’s Damages Opinions**

14 On February 20, 2023, Mr. Lasinski served an initial expert report on the appropriate
 15 damages in this case under two models: (1) Plaintiffs’ actual damages and (2) Google’s unjust
 16 enrichment. *See* Dkt. No. 364-23 (“Initial Lasinski Rep.”). The Initial Lasinski Report provided
 17 damages calculations for each model for the period from July 1, 2016 through December 31,
 18 2022. *See id.* ¶ 10. On January 3, 2025, Mr. Lasinski served a supplemental expert report updating
 19 his calculations to include the full class period of July 1, 2016 through September 23, 2024, and
 20 also proffering a new model for actual damages, which the Court struck as improper on February
 21, 2025. *See* Dkt. No. 462 (“Order Striking Damages Multiplier”); *see also* Dkt. No. 454-4
 22 (“Stricken Suppl. Lasinski Rep.”). On April 25, 2025, Mr. Lasinski served a second supplemental
 23 expert report omitting his new model for actual damages. *See* Decl. of T. Chandrasekera
 24 (“Chandrasekera Decl.”) at Ex. A (“Suppl. Lasinski Rep.”).

25 The background of Mr. Lasinski’s actual damages opinion is addressed by Google’s Motion
 26 in Limine (No. 13) Regarding Improper Demonstratives and Argument Re Actual Damages, filed
 27 on August 8, 2025. *See* Dkt. No. 589.

28 With respect to unjust enrichment, Mr. Lasinski originally opined that Google’s relevant

1 operating costs were the traffic acquisition costs (“TAC”) in its profit-and-loss (“P&L”) statements,
 2 which were “not labeled as being specific to the U.S. (as opposed to global),” but which Mr.
 3 Lasinski assumed was a U.S.-specific financial statement. Initial Lasinski Rep. ¶ 83 n.150 (citing
 4 GOOG-RDGZ-00184247 (PX0419, G0588) and GOOG-RDGZ-00185744 (PX0420, G0591)).

5 Although Mr. Lasinski followed this same process in his second supplemental report,
 6 leading to his opinion that unjust enrichment for the class period ranges from \$1.498 billion to
 7 \$1.726 billion, he also added a brand new calculation in a footnote, claiming he had newly
 8 performed “alternative calculations” for unjust enrichment. Suppl. Lasinski Rep. ¶ 7 & Fig. 1; *see*
 9 *id.* at ¶ 7 n.9. Per this single footnote, Mr. Lasinski explained that he assumed that lower, global
 10 TACs percentages would apply to the United States. *See id.* ¶ 7 n.9. He refers readers to
 11 “alternative calculations” in schedule SS1.1-II which includes a range of unjust enrichment figures
 12 between \$2.127 billion and \$2.431 billion. *See id.* at SS1.1-II. No such opinion for calculating
 13 operating costs had been disclosed by Mr. Lasinski previously, and no such damages figures had
 14 been disclosed in any form by Plaintiffs before.

15 **B. Pretrial Conference Discussion and Meet and Confer Efforts.**

16 The Court held a pretrial conference on July 30, 2025. Toward the end of the pretrial
 17 conference, the Court instructed the parties to “promptly” file by Tuesday, August 5, 2025 any
 18 motions related to experts’ supplemental reports if meet and confer efforts failed to resolve
 19 outstanding issues. *See* Chandrasekera Decl. at Ex. D (“Pretrial Conf. Tr.”) at 121:7–17.¹

20 Between August 1, 2025, and August 16, 2025, the parties engaged in extensive and detailed
 21 back-and-forth over Mr. Lasinski’s new opinion in his second supplemental report and Plaintiffs’
 22 argument that Dr. Knittel had disclosed impermissible opinions in a supplemental report, too.
 23 Unfortunately, while it looked as though the parties had reached a grand bargain, the parties’
 24 negotiations ultimately fell apart, and Plaintiffs refuse to withdraw Mr. Lasinski’s newly disclosed
 25 footnote damages calculation. *See* Chandrasekera Decl. at Ex. E (“Meet and Confer Emails”).

26

 27 ¹ Plaintiffs suggest that Google’s August 8, 2025 motion in limine to exclude argument regarding
 28 the actual damages multiplier was untimely. *See* Opp’n to MIL Re Damages Multiplier 3. As
 evident from the transcript, the August 5 deadline applied to the discussion of *Daubert*-esque
 motions about supplemental expert opinions, and the issue of attorney argument was subsequent
 and independent. *See* Pretrial Conf. Tr. at 120:7–122:10.

1 **C. Plaintiffs' Opening Demonstratives.**

2 On August 17, 2025, the parties exchanged demonstratives for their opening
 3 presentations. *See* Chandrasekera Decl. ¶ 5. Plaintiffs' demonstratives show that they intend to
 4 display several per-month multipliers of Mr. Lasinski's actual damages calculation reaching up to
 5 almost \$30 billion. They also show that Plaintiffs intend to state that Google's unjust enrichment
 6 profits to be disgorged are "more than \$2.28 Billion," which corresponds to Mr. Lasinski's new
 7 footnoted damages opinion; no other unjust enrichment calculation is presented. *See id.* at Ex. F
 8 ("Plaintiffs' Demonstratives").

9 **II. ARGUMENT**

10 **A. Plaintiffs May Not Ask the Jury to Draw Inferences as to Actual Damages that
 11 are Unsupported by Evidence.**

12 The Court has stricken the only evidentiary source—Mr. Lasinski's opinion—supporting a
 13 per-month multiplier of actual damages. *See* Order Striking Damages Multiplier. But Plaintiffs'
 14 demonstratives show that they plan to argue that the jury use the impermissible model of calculating
 15 sWAA-off device months (re-written as "months of sWAA-off per device").

16 Impermissible



25 Plaintiffs' Demonstratives at 3 (highlight added).

26 Google does not dispute that the class period is 98 months long, or that the jury will hear
 27 evidence as to the length of the class period. But Plaintiffs may not use one damages model
 28 throughout this litigation—as reinforced by Court order—and then urge the jury to use exactly that

1 stricken model.

2 **B. Plaintiffs May Not Introduce Evidence of or Argument Regarding Mr.**
 3 **Lasinski's "Alternative Calculations" for Unjust Enrichment.**

4 Although the Court has ruled that the jury will at most issue an advisory verdict on unjust
 5 enrichment, Plaintiffs should not be permitted to anchor the jury on a much higher, untimely
 6 "alternative calculation" made by Mr. Lasinski based on a new method for determining the TAC to
 7 subtract from revenue first disclosed years after expert discovery in a footnote. Indeed, if parties
 8 disclosed a new argument in a reply brief, in a footnote, the Court would safely ignore it; so should
 9 Mr. Lasinski's footnote damages disclosure be.

10 Yet Plaintiffs' opening demonstratives show that the only figure they plan to ask the jury
 11 for is based on the late disclosed footnote. *See* Plaintiffs' Demonstratives at 6 (highlight added).

12 This is not Mr. Lasinski's first attempt to balloon his initial damages figures. The Court
 13 already excluded Mr. Lasinski's "illustrative calculations" of upwardly-adjusted actual
 14 damages. *See* Order Striking Damages Multiplier at 3, 7. It should also exclude Mr. Lasinski's
 15 "alternative calculations" of upwardly-adjusted unjust enrichment figures, and related attorney
 16 argument and demonstratives. *See Turner v. Thyssenkrupp Materials NA, Inc.*, No. 818-cv-00822-
 17 CJC-KESx, 2020 WL 7123312, at *3 (C.D. Cal. Nov. 5, 2020), *order clarified*, 2020 WL 7863859
 18 (C.D. Cal. Nov. 12, 2020) (stating a party "aggrieved by an untimely supplementation may move
 19 to strike" the tardy report or for other sanctions); *see also, e.g., Asia Vital Components Co. v. Asetek*
 20 *Danmark A/S*, 377 F. Supp. 3d 990, 1005–06 (N.D. Cal. 2019) (striking portions of expert
 21 declaration disclosing new theories).

22 Google recognizes that it files this motion to exclude Mr. Lasinski's "alternative
 23 calculations" on the eve of trial. *See* Meet and Confer Emails at 1. Google would have filed a
 24 motion in limine by August 5, 2025, pursuant to the Court's order, except for the fact that it believed
 25 it had agreed to a compromise proposed by Plaintiffs that "Lasinski will not testify that
 26 damages/unjust enrichment should be the figures identified in SS1.1-II" by August 4, 2025. *See*
 27 Chandrasekera Decl. ¶ 4; Meet and Confer Emails at 5. Not until the night before this filing—*i.e.*,
 28 the night of August 16, 2025—did Plaintiffs surprise Google with the statement that the parties

1 “ha[d] not reached an agreement” (contravening the basic principle of offer-and-acceptance). *See*
 2 Meet and Confer Emails at 1. Google has accordingly attempted to file this argument with all due
 3 haste.

4 **III. CONCLUSION**

5 For the reasons stated above, Google respectfully requests that, prior to Plaintiffs’ opening
 6 presentation, the Court Order that Plaintiffs may not urge the jury to use a new per-month damages
 7 model; may not introduce evidence of the unjust enrichment figures from Mr. Lasinski’s
 8 “alternative calculations” using a new and untested method for calculating operating costs; and may
 9 not present demonstratives or argument on these damages issues.

10

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12 Dated: August 17, 2025

Respectfully submitted,

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